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FISCAL IMPACT STATEMENT

LS 6062

BILL NUMBER: SB 251

NOTE PREPARED: Apr 20, 2011

BILL AMENDED: Apr 19, 2011

SUBJECT: Clean Energy.

FIRST AUTHOR: Sen. Gard

FIRST SPONSOR: Rep. Lutz

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Federally Mandated Costs:* This bill defines a "compliance project" as a project undertaken by an energy utility to comply with certain specified federally mandated requirements. It requires an energy utility that seeks to recover federally mandated costs incurred in connection with a compliance project to apply to the Utility Regulatory Commission (IURC) for a certificate of public convenience and necessity for the compliance project. The bill sets forth certain factors that the IURC must consider in determining whether to grant a certificate. It specifies that if the IURC approves a proposed compliance project and the projected federally mandated costs associated with the project, the following apply: (1) 80% of the approved costs shall be recovered by the energy utility through a periodic retail rate adjustment mechanism. (2) 20% of the approved costs shall be deferred and recovered by the energy utility as part of the next general rate case filed by the energy utility with the IURC. (3) Actual costs exceeding the projected federally mandated costs of the approved compliance project by more than 25% shall require specific justification and approval before being authorized in the energy utility's next general rate case.

Nuclear Energy: This bill allows a nuclear energy production or generating facility to qualify for certain financial incentives available for clean energy projects if the facility: (1) supplies electricity to Indiana retail customers on July 1, 2011; and (2) is undergoing a comprehensive life cycle management project to enhance the safety and reliability of the facility while it is licensed to operate by the United States Nuclear Regulatory Commission.

Voluntary Clean Energy Portfolio Standard: It requires the IURC to adopt rules to establish the voluntary clean energy portfolio standard program to provide incentives to participating electricity suppliers to obtain specified percentages of electricity from clean energy sources in accordance with two clean portfolio

standard goals (CPS goals). The bill sets forth qualifying clean energy resources for purposes of the program. It amends the definition of "renewable energy resources" for purposes of the statute providing financial incentives for clean energy projects to consist of certain clean energy resources that qualify for the voluntary clean energy portfolio standard program. It requires the IURC to determine, before approving an application for participation in the program, that approving the application will not result in an increase to the electricity supplier's retail rates and charges above what could reasonably be expected if the application were not approved. This bill provides that in determining whether an electricity supplier has met a CPS goal, the IURC shall require that at least 50% of the clean energy obtained by the electricity supplier to meet the energy requirements of its Indiana retail customers must originate from clean energy resources located in Indiana. It provides that a participating electricity supplier may own or purchase clean energy credits to meet a CPS goal. Beginning in 2014, it requires: (1) a participating electricity supplier to report annually to the IURC on the supplier's efforts to meet the CPS goals; and (2) the IURC to include in its annual report to the regulatory flexibility committee a summary of the information reported by participating electricity suppliers.

State Utility Forecasting Group: This bill amends the Indiana Code section concerning the State Utility Forecasting Group's (SUFG) annual study of renewable energy resources as follows: (1) Requires the SUFG to study certain specified clean energy resources. (2) Provides that the IURC: (A) may direct the SUFG to study additional clean energy resources; and (B) shall direct the SUFG concerning the appropriate level of detail for the report prepared in connection with the study. (3) Removes the requirement that the SUFG evaluate potential renewable energy generation opportunities from biomass and algae production systems.

Certificate of Authority: This bill establishes procedures for the issuance by the Department of Natural Resources (Department) of a carbon dioxide transmission pipeline certificate of authority that allows the construction, operation, and maintenance of a pipeline and the use of eminent domain for those purposes. It requires the Department to deposit in the Oil and Gas Environmental Fund (Fund) fees collected in connection with an application for a certificate. It allows money in the Fund to be appropriated for pipeline safety purposes. This bill requires an applicant for a certificate to have entered into a contract for the transportation of carbon dioxide with at least one producer of carbon dioxide that is located in Indiana. It provides that an applicant for a certificate must comply with federal and state safety regulations governing carbon dioxide transmission pipelines. It also provides that an applicant for a certificate must have: (1) entered into an agreement with the IURC concerning the mitigation of agricultural impacts from the construction of the proposed pipeline; or (2) signed a statement indicating that the applicant agrees to use, in constructing the pipeline, certain guidelines adopted by the IURC's pipeline safety division.

The bill limits a carbon dioxide transmission pipeline company to exercising the power of eminent domain only for a right of way or an easement. It provides that a carbon dioxide transmission pipeline company that exercises the power of eminent domain must: (1) compensate the property owner by making a payment to the owner equal to: (A) 125% of the fair market value of the interest acquired, if the interest involves agricultural land; or (B) 150% of the fair market value of the interest acquired, if interest involves a residence; and (2) pay to the property owner: (A) any damages determined under the statute governing eminent domain; and (B) any loss incurred in a trade or business; that are attributable to the exercise of eminent domain. It allows a carbon dioxide transmission pipeline company 180 days after the pipeline is completed to provide information to the department about the actual route of the pipeline. It also provides that the provisions concerning carbon dioxide transmission pipelines expire July 1, 2021.

Effective Date: Upon passage; July 1, 2011.

Explanation of State Expenditures: *IURC:* This bill will increase administrative expenditures of the IURC

by requiring the IURC to evaluate petitions to allow utilities to recover federally mandated costs and capital investment costs. The bill also requires the IURC to include in its annual report to the Regulatory Flexibility Committee a summary of the information reported by electricity suppliers participating in the Voluntary Clean Energy Portfolio Standard Program (established in this bill). It is estimated that the IURC will be able to implement these provision with its existing level of resources.

State Utility Forecasting Group (SUFG): This bill provides that the IURC may direct the SUFG to study additional clean energy resources as the IURC considers appropriate and shall direct the SUFG concerning the appropriate level of detail for the report prepared in connection with the study. The SUFG's current level of resources should be sufficient.

State & Local Utility Expenditures: This bill could increase expenditures by state agencies for utilities to the extent that the provisions allowing for cost recovery increase utility rates. The overall impact on expenditures is indeterminable.

Certificate of Authority. Any future increases in administrative expenses for the DNR will depend on the number of entities that are established. Coal gasification is proposed for a facility in Rockport. The DNR would need to adopt rules and establish a procedure to certify the coal gasification plan.

Forms. Existing staff could develop the necessary permit application forms.

Review of Proposed Projects. Coal gasification is proposed for a facility in Rockport. If qualifying entities are established in the future, the DNR would need to review the application. Depending on the length and complexity of the proposed project and the quality or completeness of the application, the following activities and time frames would be involved:

- Initial review to determine whether application is complete - 0.5 to 3 working days.
- Technical review of application and preparation for public informational meeting – 1 to 3 working days.
- Public informational meeting – costs range from \$100 to \$300.
- Review of comments received from public informational meeting – 0.5 to 3 working days.
- Preparation of final determination to approve or deny the application – 0.5 to 2 working days.

Administrative Review. A determination of the DNR is subject to administrative review. The number and nature of future requests for review, if any, and the associated expenses are indeterminable.

Potential Applicants. Coal gasification is proposed for a facility in Rockport. In the future, qualifying entities could include (1) entities that transport CO₂ from Indiana to locations outside Indiana; (2) transporters that move CO₂ through Indiana, and (3) entities interested in transporting the CO₂ to permitted geological storage facilities within Indiana.

Explanation of State Revenues: *Utility Rates:* To the extent that any of the provisions of this bill increase utility rates, there could be an increase in Utility Receipts Tax (URT), Utility Services Use Tax (USUT), and Sales Tax collections. The amount of any increase is indeterminable and will depend on rate adjustments allowed by the IURC.

The rate for both the URT and USUT is 1.4%. The URT is calculated on the gross receipts of all entities

providing the retail sale of utility services in Indiana. The USUT is imposed on the retail consumption of utility services in Indiana. Both the URT and USUT are deposited in the state General Fund.

Sales Tax revenue is deposited in the state General Fund (99.178%), the Public Mass Transportation Fund (0.67%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%).

Application Fees. Coal gasification is proposed for a facility in Rockport. If any fees are collected in the future, the DNR must deposit fee revenue in the Oil and Gas Environmental Fund, to be used to administer the certificate program.

(Revised) Background Information - The Voluntary Clean Energy Portfolio Standard Program is a financial incentive program for supplying electricity generated from clean energy resources. The bill specifically lists energy included in the definition of clean energy resources. An electricity supplier that seeks to participate in the program must submit an application to the IURC showing a reasonable expectation of being able to supply 10% of its electricity from clean energy by December 31, 2025. The bill provides that the IURC must approve the application if the IURC determines that approving the application will not result in an increase in utility rates above what could reasonably be expected if the application were not approved. The bill also provides that in determining whether an electricity supplier has met a Clean Energy Portfolio Standard goal, the IURC must require that least 50% of the clean energy obtained by the electricity supplier to meet the energy requirements of its Indiana retail customers must originate from clean energy resources located in Indiana.

As used in the bill, "electricity supplier" means a public utility that furnishes retail electric service to the public, but does not include municipally owned utilities.

Explanation of Local Expenditures: *Eminent Domain.* If a carbon dioxide transmission pipeline company received a certificate of authority and is not able to reach an agreement with a property owner for the construction, operation, and maintenance of the pipeline on the owner's property, the company may proceed to condemn land, improvements, a right-of-way, an easement, or any other interest in the owner's property necessary for the pipeline.

An affected landowner may bring an action in the circuit court of the county in which the landowner's property is located. These provisions will increase local court expenditures by an indeterminable amount.

Libraries. Applicants must place for public inspection a copy of the application in a public library located in each county in which the carbon dioxide transmission pipeline is proposed to be located. This provision should have no significant impact on libraries.

Explanation of Local Revenues: *Eminent Domain.* If actions are brought in a local court, court fee revenue may increase by a small amount.

State Agencies Affected: IURC; DNR All.

Local Agencies Affected: Libraries and courts; All

Information Sources: DNR

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